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No. 81-523

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CONTAINER CORPORATION OF AMERICA,

Appellant,

v.

FRANCHISE TAX BOARD,

Appellee.

ON APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOR THE FIRST APPELLATE DISTRICT

OPPOSITION OF APPELLEE TO SECOND MOTION OF APPELLANT TO EXPEDITE NOTING OF PROBABLE JURISDICTION

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Tax Board

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In November 1981, this Court considered and denied appellant's motion to note probable jurisdiction. On April 28, 1982, a second motion was received by appellee and we were advised that any opposition must be filed by April 28. Time permits only summary response.

Appellee strongly opposes any delay in deciding the constitutional issues raised by Chicago Bridge & Iron (CBI) (in No. 81-349). CBI (see Brief of Appellant, Questions Presented, p. i) raises important straightforward legal constitutional

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issues[1] which are being argued by multi-national unitary businesses in numerous cases now in lower courts.

Clear and prompt resolution of these questions will save endless hours of time and huge attorney costs in many pending cases. The Chicago Bridge decision should not be delayed, but should be issued prior to the summer recess if at all possible.

This Court should clearly and speedily rule in the CBI case that use by states of formula apportionment to determine taxable income of unitary international businesses, (1) does not prevent the federal government from speaking with one voice, in violation of the commerce clause, (2) nor does creation of a substantial risk of double taxation violate the commerce clause, (3) nor does the normal three-factor formula violate due process or equal protection requirements.

Probable jurisdiction in this case should not be noted. Throughout this case, appellant Container Corporation of America (CCA) has primarily argued that it is not unitary (under its version of the evidence). The record contains controverted contradictory, disputed evidence. The courts have rejected CCA's version of the evidence and refused to find the

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1. Various Amici have attempted to state and argue questions different from those raised by appellant CBI, and to present their own "hypothetical" facts. Those aberrations should not either be allowed to side-track prompt and clear resolution of the clear legal issues raised by CBI's frontal attack on any use of formula apportionment by international multi-corporate unitary businesses.

unconstitutional "double taxation" which CCA incorrectly states "actually exists." The record here is not one on which general constitutional rules should be created as guides for use generally.

Our "Opposition" to Appellant's first motion, filed November 18, 1981, specifically, and the Motion to Dismiss or Affirm, filed about October 1, 1981, in general, should be referred to for additional reasons why probable jurisdiction should not be noted (and they are incorporated by this reference).

Respectfully submitted,

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